



DETROIT BRANCH....NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

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WRITTEN TESTIMONY OF THE DETROIT BRANCH NAACP BY KHALILAH SPENCER, CHAIR
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MICHIGAN STATE HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE MARK MEADOWS, CHAIRMAN

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"And Justice For All"

Representative Meadows, on behalf of the members of the Detroit Branch NAACP, I thank you for the opportunity to provide testimony in support of public defense reform. The Detroit Branch NAACP firmly believes that Michigan's failing public defense system is in need of reform. The constitutional right of all individuals to effective defense representation regardless of race, income or background, is not being upheld. A state-funded public defense system that meets the Eleven Principles of a Public Defense Delivery System¹ would ensure a more effective, efficient and ethical system that upholds the rights that are fundamental.

Background:

Founded on February 12, 1909, the National Association for the Advancement of Colored People ("NAACP") is the nation's oldest, largest and most widely recognized grassroots civil rights organization. The NAACP's more than half-million members and supporters throughout the United States and the world are advocates for civil rights in their communities, who monitor equal opportunity in the public and private sectors. The mission of the NAACP is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination.

The Detroit Branch NAACP received its charter to operate as a local branch in 1912. The Detroit Branch has remained the largest Branch of the NAACP since its inception. In May 2007, the Detroit Branch launched its "And Justice For All" campaign to address various problems with Michigan's justice system, including but not limited to, indigent and juvenile public defense.

Race and the right to counsel:

The Sixth Amendment of the United States Constitution states that "in all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defense." Each person has the right to effective defense representation under the constitution, even if one cannot afford to hire an

¹Adopted by the State Bar of Michigan Representative Assembly, April 2002

attorney. However, in Michigan, this right is being denied. Every day our most vulnerable citizens are put on a fast-moving assembly line to our state's overcrowded prison system.

Low-income people of color are disproportionately among those who need access to adequate and qualified public defense. As a result, people of color are disparately impacted by Michigan's failing public defense system. For example, while minorities make up only 18.8 percent of Michigan's population², they account for 54.8 percent of Michigan's prison population.³ Nationally, a U.S. Department of Justice survey showed that 77 percent of African Americans and 73 percent of Latinos in state prisons were represented by public defense attorneys.⁴

In Wayne County, Michigan, home to the Detroit Branch NAACP, the Circuit Court processes approximately 19,000 felony cases per year. Yet, only \$8 million has been allotted by the county for public defense. This amount has not changed since 1982! The Legal Aid & Defender Association, mandated by law to handle 25% of the county's caseload, is given only \$1.98 million to represent its clients. Inflation has reduced its staff from a high of 25 lawyers and five investigators in 1986, to only 16 lawyers and zero staff investigators today. Compare this to the Wayne County Prosecutor, who enjoys the investigative resources of the Michigan State Police, Wayne County Sheriff and the police departments of every municipality in the county. While the prosecutor has public funds to hire experts, public defense attorneys have to petition the court on every case, and then try to find an expert who will handle the case for a significantly discounted fee. Furthermore, for those that are granted a public defense lawyer, their lawyers often are overworked and under-resourced. In addition to the lack of funding for investigative resources or expert witnesses; individuals often meet their lawyers just a few minutes before court hearings because of unmanageable workloads; and there is no statewide standard or requirement for training.

In evaluating Michigan's public defense system, the National Legal Aid and Defender Association (NLADA) found that many individuals are not represented at pre-trials in some jurisdictions, even though an attorney has been requested.⁵ In other jurisdictions, requests for counsel are denied in misdemeanor cases for which there is no potential jail sentence, regardless of the collateral economic consequences that an individual may have to face if convicted. Court observations revealed that many individuals – both adults and children – waive their right to counsel in part because of the fees that may be assessed if counsel is requested, or because they are told to speak to the prosecutor to work out a deal before considering a request for counsel. The state has no statewide eligibility or screening standards that are uniformly applied. In addition, there is no statewide requirement for or enforcement of the prompt appointment of counsel.

² U.S. Census Bureau, 2006 American Community Survey.

³ Michigan Department of Corrections, 2006 Annual Report, p. 35.

⁴ Gohara, M.S., Hardy, J.S., Hewitt, D.T., "The disparate impact of an under-funded patchwork indigent defense system on Mississippi's African Americans: The civil rights case for establishing a statewide, fully funded public defender system." *Howard Law Journal*, 49 (1) (Fall 2005).

⁵ National Legal Aid and Defender Association, "A Race to the Bottom: Speed & Savings over Due Process – A Constitutional Crisis" (June 2008).

These are just a few examples of a public defense system that clearly is neither effective nor just. The bottom line is that the constitutional right of minority Michigan residents to effective public defense is being consistently violated. This is not the justice that our founding fathers intended and this reality disparately impacts people of color - all NAACP constituents - who comprise more than 85% of the defendants.

Juvenile defense:

“Juvenile justice representation is considered in many ways as an afterthought all across the state of Michigan. As inadequate as adult representation is, the treatment of kids in delinquency proceedings is far worse.”

-David Carroll, National Legal Aid & Defender Association, “A Race to the Bottom: Speed & Savings over Due Process – A Constitutional Crisis”

One of the NAACP’s core advocacy issues is juvenile justice. While all children accused of delinquent acts have a right to be represented by an attorney in their proceedings, minorities are more greatly affected by the inadequate access to effective public defense. In Michigan, of the 2,706 youth in residential placement in Michigan in 2003, 44.6 percent were African American and 4.0 percent were Latino.⁶

Moreover, the majority of the children accused are either denied counsel, waive counsel without a full understanding, or are represented by counsel working in a system that fails to provide the resources and training necessary to provide an effective representation. Many juvenile defense attorneys have caseloads above the national standards and are forced to meet their clients only minutes before court hearings as a result. Moreover, there are no statewide training requirements for public defense attorneys, and there is little training regarding juvenile delinquency proceedings available. Yet, Michigan spends 3.2 times as much per prisoner as per public school pupil.⁷

Conclusion:

The pursuit of justice is a fundamental principle of American democracy. Michigan’s public defense system has been singled out numerous times over the past few decades for its failures in upholding the constitutional right to counsel. The Detroit Branch NAACP believes it is time for lawmakers of this state to act and ensure that all of Michigan’s residents, irrespective of race, have an equal access to the justice system. Again, I thank you for the opportunity to submit this testimony.

⁶ Children’s Defense Fund, “Cradle to Prison Pipeline – Michigan Fact Sheet” 2007.

⁷ Children’s Defense Fund, “Cradle to Prison Pipeline – Michigan Fact Sheet” 2007.